

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 15-39 are pending in the application. Claims 2-14 have been cancelled. Claims 15-17 have been rewritten in independent form including all limitations of base claim 2, except the second to last section, and the respective intervening claims. The specification including the Abstract and the drawings have been revised in the manner kindly suggested by the Examiner in the Office Action. New FIG. 8 has been added and the specification has been amended to include a brief description of and reference to newly added FIG. 8. Claims 18-39 have been added to provide Applicants with the scope of protection to which they are believed entitled. Claims 18-27 correspond to cancelled claims 3, 6-14, respectively. No new matter has been introduced through the foregoing amendments.

In the following section, Applicants will repeat the arguments advanced in the unentered July 2, 2004, Amendment.

The drawing objections manifested in paragraph 1 of the Office Action are believed overcome in view of the above amendments.

The drawing objection manifested in paragraph 2 of the Office Action is believed overcome in view of the submission of new FIG. 8 which shows the claimed stiffness relationship.

The specification objections manifested in paragraphs 3-4 of the Office Action are believed overcome in view of the above amendments.

The specification and claim objections manifested in paragraphs 5-7 of the Office Action are moot as the claim language being objected to has been removed.

The 35 U.S.C. 112, *first paragraph* rejection of claims 15-17 as failing to comply with the written description requirement is traversed for the following reasons.

First, the Examiner has not met the **initial burden** of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion. These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a *prima facie* case by providing **reasons why** a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. *See MPEP* (Rev. 2, May 2004), Section 2163.III.A, page 2100-176.

The 35 U.S.C. 112, *first paragraph* rejection manifested in paragraph 8 of the Office Action clearly failed to meet, at least, requirement (B), because the Examiner did not specify any reason why a skilled artisan would not have recognized that the inventor was in possession of the invention as claimed (the lengthy discussion in paragraph 8 of the Office Action tended to state that the Examiner personally, rather than a skilled artisan, could not recognize that the inventor was in possession of the invention as claimed). Accordingly, Applicants are not persuaded that a *prima facie* case of lack of written description for the rejected claims has been properly established. The 35 U.S.C. 112, *first paragraph* should be withdrawn or at least rephrased.

Second, Applicants respectfully submit that a skilled artisan would have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. For example, with respect to the claimed position of the absorbent core relative to the crotch region, the claimed invention finds support in at least page 8, line 16 through page 9 line 1 of

the specification as filed. This passage even includes language similar to the language of claim 2, now amended claims 15-17. With respect to the “under tension” limitation, the Examiner’s attention is respectfully directed to the second to last section of each of amended claims 15-17. With respect to the “circular arc” limitation, the claimed invention finds support in the drawings as filed, e.g., FIG. 1, where it is depicted that some portion, e.g., 10A, of the elastic does not extend in a circular arc. The remaining limitations are not recited in pending claims 15-17.

In view of the above arguments, Applicants respectfully request that the *35 U.S.C. 112, first paragraph* rejection of claims 15-17 be withdrawn.

The *35 U.S.C. 112, second paragraph* rejection of claims 15-17 as being indefinite is believed overcome, because the allegedly indefinite claim language has been removed from the pending claims.

The Examiner’s claim interpretations in paragraph 10 of the Office Action are noted. However, the source of the Examiner’s “+/- 45 degrees” definition of “transversely” is unclear. Clarification is respectfully requested.

The art rejections manifested in paragraphs 11-15 of the Office Action are moot as the rejected claims have been cancelled.

The *35 U.S.C. 103(a)* rejection of claims 15-17 as being obvious over U.S. Patent No. 6,049,916 to *Rajala* and U.S. Patent No. 6,367,089 to *Van Gompel* is traversed because the applied references singly or in combination fail to disclose, teach or suggest all limitations of the rejected claims.

As to claim 15, the applied references fail to disclose, teach or suggest that “a tensile stress of said first elastic member being greater in the end portions than in the central portion.” This claim feature finds support in page 7, lines 15-19 of the specification and FIG. 1. In particular, in

the specific embodiment shown in FIG. 1, the tensile stress of end portions 9a of the first elastic member is greater than in the central portion 9b.

The Examiner relied on column 11, lines 26-62 of *Rajala* for this claim feature. However, this passage of *Rajala* only discloses that the amount of elongation of the front leg elastic (48) may be different from that of the crotch elastic (51) and that of the back leg elastic (50). See lines 35-36, 38, and 50-51. The cited passage in particular and *Rajala* as a whole do not teach or suggest that the amounts of elongation in sections 48A, 48B and 48C of the front elastic may be different. In addition, the reference clearly fails to teach or suggest the desirability of the claimed tension relationship, i.e., a tensile stress of the front elastic is greater in the end portions (e.g., 48A and 48C of *Rajala*) than in the central portion (e.g., 48B of *Rajala*).

Accordingly, Applicants respectfully submit that the obviousness rejection of claim 15 is inappropriate and should be withdrawn.

As to claim 16, the applied references fail to disclose, teach or suggest that “a tensile stress of said second elastic member being greater in the end portions than in the central portion.” The rejection of claim 16 is traversed for reasons similar to those advanced with respect to claim 15.

As to claim 17, the applied references fail to disclose, teach or suggest that a tensile stress of the end portions of each of said first and second elastic members is greater than that of the central portion. The rejection of claim 17 is traversed for the reasons advanced with respect to any of claims 15 and 16.

In the following section, Applicants will respond to the Examiner’s arguments in the Advisory Action.

The Examiner’s position manifested in lines 4-8 of the continuation sheet of the Advisory Action is noted. However, Applicants cannot agree with the Examiner’s position in that column

12, lines 18-24 of *Rajala* teaches the claim feature of elastic members having tensile stress in the end portions greater than in the central portion. *Rajala* in column 12, lines 18-24 simply teaches how the elastic members are attached to the garment.

The Examiner's refusal to enter the amended specification and approve the proposed drawing changes is noted. Entry of the amended specification and approval of the drawing changes in view of the RCE filed concurrently herewith are believed appropriate and therefore courteously solicited.

The Examiner's position with respect to Applicants' remarks in pages 17-18 of the July 2, 2004 Amendment is noted.

With respect to Applicants' remarks on page 17 of the July 2, 2004 Amendment (repeated above in this Rule 114 Submission) regarding the Examiner's initial burden in a rejection under the written description requirement of 35 U.S.C. 112, *first paragraph*, Applicants note that the Examiner has not responded to Applicants' remarks. The Examiner is kindly asked to clarify her position.

With respect to Applicants' remarks on pages 17-18 of the July 2, 2004 Amendment (repeated above in this Rule 114 Submission) regarding why a skilled artisan would recognize Applicants had possession of the claimed invention, the Examiner is kindly reminded that the drawings are part of the disclosure of the invention and therefore can provide support for the claims, as argued in page 18, lines 3-5 of the July 2, 2004 Amendment.

In the following section, Applicants will discuss patentability of all pending claims.

Claims 15-17 are clearly patentable over the applied art of record for the reasons advanced above.

Claims 15-17 are further patentable over the applied references, because the references,

especially *Rajala*, fail to disclose, teach or suggest the claimed limitation of claim 15 that “said first elastic member has a **central portion** underlying said front end zone of said core and **being attached under tension** to said backsheet,” and similar limitations of claims 16 and 17. As recited in claim 15, the central portion of the first elastic member (i) underlies the front end zone of the core and (ii) is attached under tension to the backsheet. The corresponding portion of *Rajala*, i.e., section 48B, is not disclosed by the reference to be attached to the backsheet. In addition, even if *Rajala* does teach attachment of section 48B to the backsheet, the section 48B is not disclosed to be attached under tension. Note, column 12, lines 22-24 of *Rajala*, where it is disclosed that section 48B is substantially relaxed and under no substantial elongation and preferably includes a modest amount of slack.

Claims 15-17 are further patentable over the applied references because the references, especially *Rajala*, fail to disclose, teach or suggest the claimed limitation of claim 15 that the second elastic member extends **across said rear end zone** of said core, and similar limitations of claims 16 and 17. The Examiner’s position, as best understood, is that the embossed region 66/76 of *Rajala*/*Van Gompel* is readable on the claimed middle zone of the core because the embossed region has an increased density. If so, in the Examiner’s combined article of *Rajala* and *Van Gompel*, the second elastic member (48B coincident with section line B-B in FIGs. 1-2 of *Rajala*) extends across the middle zone, rather than the rear end zone (68 in FIG. 2) of the core. Note, FIG. 2 of *Rajala* where section line B-B is illustrated to cross the middle zone 76.

Withdrawal of the art rejection of claims 15-17 is now believed appropriate and therefore courteously solicited.

New claims 18-39 depend from claim 15, 16 or 17, and are considered patentable at least for the reasons advanced with respect to the independent claims. Claims 18-39 are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art.

For example, as to claim 20, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that an entire area of said topsheet is smaller than that of said backsheet and **greater** than an entire area of an upper surface of said core. See FIG. 4 of the instant application. As can be seen in FIG. 1 of *Rajala*, the reference's article is a diaper cover and does not appear to have a "topsheet." The only element that can be regarded as a topsheet is the upper layer 66 of the core (FIG. 4). However, the area of upper layer 66 is equal to the area of the upper surface of the core, failing to disclose, teach or suggest the limitation of claim 20.

As to claim 23, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that the third elastic members are sandwiched between said upper layer and said topsheet. Note, claim 10 corresponding to claim 23 was not rejected over *Rajala*.

As to claim 25, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that a closest distance between said first and second elastic members as measured in said longitudinal direction is greater than a half of an entire extent of said core as measured in said longitudinal direction. Note, claim 12 corresponding to claim 25 was not rejected over *Rajala*.

As to claim 27, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that a basic weight of said core is lower in the front and rear end zones than in the middle zone. Note, claim 14 corresponding to claim 27 was not rejected over *Rajala*.

As to claims 29 and 32, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that said middle zone of said core, as measured in a longitudinal direction of said undergarment, is longer than both said front and rear end zones of said core. In *Rajala*, the middle zone (embossed region 66/76 in FIG. 2) is apparently shorter than the rear end zone (68 in FIG. 2) of the core.

As to claims 30 and 33, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that, in the front and rear waist regions, there are a plurality of parallel auxiliary

elastic members extending in a transverse direction of said undergarment, all of the auxiliary elastic members in the front waist regions being forwardly spaced in a longitudinal direction of said undergarment from the front end zone of said core, and all of the auxiliary elastic members in the rear waist regions being rearwardly spaced in the longitudinal direction from the rear end zone of said core. In *Rajala*, some of the auxiliary elastic members are not spaced from the respective end zones of the core in the presently claimed manner. Note, the elastic members 64 depicted by dashed lines in FIG. 2 of *Rajala*.

Likewise, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest the invention of claims 31 and 34.

As to claim 35, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that a central portion of said first elastic member underlies said front end zone of said core and is directly attached under tension to said backsheet.

As to claim 36, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that the stiffness of said core in the entire front and rear end zones is lower than in the entire middle zone.

As to claims 37-39, the applied references, especially *Rajala*, clearly fail to disclose, teach or suggest that the stiffness of said core in an entire area of the rear end zone, which area is located immediately above the central portion of said second elastic member, is lower than the stiffness of the core in the middle zone. See FIGs. 3 and 6 of the instant application. In *Rajala*, the areas of the embossed region 76 (FIG. 2) located along the section line B-B (immediately above section 48B) have the same stiffness as the “middle” zone of the core.

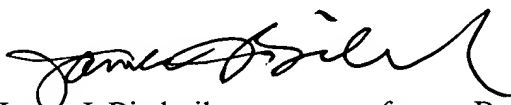
Accordingly, all claims in the present application, namely, claims 15-39, are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under *37 C.F.R. 1.136* is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN GILMAN & BERNER, LLP



James J. Bindseil
Registration No. 42,396

for:

Benjamin J. Hauptman
Registration No. 29,310

USPTO Customer No. 22429
1700 Diagonal Road, Suite 310
Alexandria, VA 22314
(703) 684-1111 BJH/KL/klb
(703) 518-5499 Facsimile
Date: September 3, 2004